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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,628	10/08/2003	Ronald C. Gagne	IMA-0021-KWIKHANDS	6110
42416	7590	04/11/2007		
EDWARD L. KELLEY DBA INVENTION MANAGEMENT ASSOCIATES 241 LEXINGTON STREET BLDG. 15 UNIT 1A WOBURN, MA 01801			EXAMINER ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/681,628

Applicant(s)

GAGNE, RONALD C.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 17-20 and 24-29 is/are pending in the application.  
4a) Of the above claim(s) 1-10, 17 and 18 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 19, 20, 24-49 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 20, 24, 25, 37-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. the newly added limitation "a compliant material formed to be indented by a ball weighing ..." is not supported by the application as filed. The application as filed provides support for a mat which is compliant such that the practice surface is slightly indented by the weight of the ball, at least by the weight of the heaviest ball, please refer to paragraph 0031 of the Specification. By excluding "slightly" it is implied that the mat has the capability of being more resilient than what has actually been disclosed.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 19, 20, 24-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Budolfson (5,192,259) in view of Chiarelli (3,704,891), Corely (4,943,055), Mason (6,059,673), Nudo (6,846,252) and Park et al (6,139,438).

Regarding the spherical element:

It is noted that a regulation hockey puck weighs between 5.5 oz to 6 oz and has a diameter ranging from 1" to 3".

Budolfson teaches that for strengthening hands and wrists of athletes, the athletes should practice and train using weighted steel balls (22), the weight of the balls ranging from 2.5 pounds (40 oz) to 4.0 pounds (64 oz) and the diameter of the balls ranging from 2.5" to 3.0".

Chiarelli also shows weighted practice pucks, wherein the weight of the puck can be 2 to 3 times greater than a regulation puck (11-12oz to 16.5-18oz) for use by senior or adult players and lighter than regulation puck (<5.5oz to 6oz) for younger players.

Corely shows that weighted warm-up balls are desirable in training athletes in sporting events. Corely further shows that a common tool used to enhance the benefits of actions undertaken by athletes is a weight. The exercise benefits of lifting and training with weights are well known. Muscles that manipulate weights strengthen. Additionally, weights are recognized as being valuable in warming up. Corely further teaches the benefits of providing a set of training balls, wherein the set includes at least two balls and the balls can be identified with indicia specifically indicating the relative weight of each ball.

It is noted that generally, “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) see also *Peterson*, 315 F.3d at 1330, 65 USPQ2d at 1382. It is further noted that “The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.”; *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969).

Based on the above teachings it is readily apparent that there is nothing unobvious in providing balls of varying weight and diameter in the form of a set or kit, wherein the kit having the varying weighted balls provides an ideal means for a person desiring to warm up or practice, to select a ball most useful to him or her based upon his or her strength or other factors.

Regarding the practice surface or mat:

Budolfson additionally shows the spherical element can be practiced on a playing or practice surface, wherein the practice surface is a flat hard planer surface, which can be one of a concrete i.e. garage or driveway, wooden planar surface, hard asphalt etc.). See column 1, lines 39-47.

Mason shows a goalie training system wherein the playing surface is comprised of synthetic ice. Commonly, synthetic ice is formed of a plastic material such as cellulose, ABS, polyethylene, acrylic, polystyrene, polypropylene etc. there being nothing unobvious in utilizing any one of the above materials for the training system of Mason.

Nudo provides a practice surface that is positioned on a surface such as the driveway having a length in the range of 4 to 8 feet. Nudo does not disclose the width of the practice

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surface, but as best seen in figures 1 and 5 the width appears to be half the length. The mat comprises a layer of one of polyethylene (column 2, lines 21-27); the mat having a layer thickness in the range greater than 0.5 - 2.0 inches (such can best be seen in figure 7; also see column 2, lines 50-53). As can be seen from the figures the mat has a uniform thickness and is formed of a resilient material, which an indentation would be formed in the top surface of the mat by a weighted material. Clearly the degree of indentation would be dependent on the weight of the element.

Park et al shows an artificial ice skating rink assembly, wherein the rink is formed of a plurality of panels interlocked together. The panels can be rectangular or square in shape. The surface of the rink is formed of one of a polyolefin; polyethylene; polypropylene; high molecular weight polyethylene having a viscometric-based molecular weight of approximately 250,000 to 2,000,000; a plastic formulation including, in weight percentages, 97.00 to 99.50% polyethylene, 0.30 to 0.70% titanium dioxide, 0.09 to 0.50% hydrophobic ingredient, 0.40 to 0.50% ultraviolet stabilizer, and 0.09-0.10% antioxidant; a plastic formulation comprising at least 0.19 wt. % total lubricant selected from the group consisting of glycerol, glycerol esters, glycerides, fatty acids, fatty acid esters of alkaline earth metals, and mixtures thereof. Additionally, the panels include a friction-reducing ingredient selected from the group consisting of silicone resins and silicone oils, present as a coating applied to upper major surfaces of panels included in said panel means.

Based on the above teachings it is readily apparent that there is nothing unobvious in providing playing surfaces or mats formed of different material. The material(s) applicant is relying on is well known in the flooring art. Therefore, there is nothing unobvious in utilizing

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any of the well-known material to form a playing surface. With regards to the size of the playing mat or surface, the user would select the size most suitable for his or her purposes.

It is well established that coefficients of sliding friction are generally 100 to 1000 times greater than coefficients of rolling friction for corresponding materials. This advantage was realized historically with the transition from sledge to wheel. Therefore, when an element is rolled on the surface it would naturally have a lower coefficient of friction than when slid on the same surface.

It is noted that the degree of resistance or friction will vary depending on the surface the element is being rolled on. The smoother the surface the lower the coefficient of friction will be between the surface and the element. Therefore, a smooth surface such as synthetic ice or wood surface would have a lower coefficient of friction than an asphalt surface. Synthetic ice has a coefficient of friction of about 0.1 and wood flooring has a coefficient of friction of about 0.5.

In conclusion, the above references alone and/or in combination teach that it is desirable to provide practice elements of varying weight and diameter. It obviously is more desirable to have a plurality of practice elements readily available in a set or kit for the convenience of the end user. As stated above the playing or practice surface can be an existing surface or a mat formed of one or more sections. Depending on the finished surface, the coefficient of friction between the element and practice surface will vary.

#### ***Response to Arguments***

5. Applicant's arguments filed 05 February 2007 have been fully considered but they are not persuasive. The affidavit submitted on 05 February 2007 has been carefully reviewed, however it

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is not convincing. Applicant is not claiming a method of use and or training, but claiming the training kit, therefore it is of no relevance the order in which the weighted balls are utilized.

As indicated in the Final Office Action dated 30 August 2006, where the general conditions of a claim(s) are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. Applicant has merely provided a set or kit, which includes a plurality of balls, four to be exact and a mat. To provide balls of varying weight and/or size for training or practice is old and well known. The prior art teaches variable weight hockey pucks or balls for training purposes. The prior art also teaches various size hockey pucks and balls.

With regards to the inclusion of a mat, applicant has disclosed in the application as filed that various surfaces other than a mat can be utilized for training, including exciting surfaces (see paragraphs 0012 and 0030). Applicant has further disclosed that molded mats which are commercially available can be used (see paragraphs 0014 and 0030) and alternatively the invention can be practiced on no mats. There does not appear to be any criticality in using a mat.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

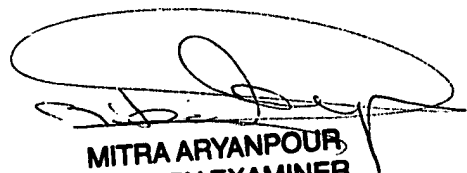


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MA

28 March 2007



**MITRA ARYANPOUR**  
**PRIMARY EXAMINER**